

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Dario Gutierrez v. Commissioner of Social Security

No. 1:23-cv-01349-GSA · No. No. 1:23-cv-01349-GSA · Decided October 17, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 Dario Gutierrez, No. 1:23-cv-01349-GSA 12 Plaintiff, ORDER
GRANTING MOTION FOR ATTORNEY FEES PURSUANT TO 42 U.S.C. 13 v. 406(B) 14
Commissioner of Social Security, 15 Defendant. (ECF No. 19) 16 17 Plaintiff's counsel Francesco
Benavides seeks an award of attorney fees pursuant to 42 18 U.S.C. § 406(b).

19 I. Background 20 Plaintiff entered into a contingent fee agreement with counsel which provides
for attorney 21 fees of up to 25% of the past due benefits awarded. ECF No. 19-3. The agreement
also provides 22 that counsel would seek fees pursuant to the Equal Access to Justice Act (EAJA),
fees which would 23 be refunded in the event of an award of past due benefits and payment of the
25% contingency fee.

24 Id. 25 Plaintiff filed a complaint in this Court on September 13, 2023, appealing the 26
Commissioner's decision denying his application for benefits. After Defendant filed the 27
Administrative Record, Plaintiff filed a motion for summary judgment. ECF No. 11. Defendant 28
didn't file a response brief. Rather, on February 13, 2024, the parties stipulated to remand the 1
matter to the agency for further proceedings.

ECF No. 14. Judgment for Plaintiff was entered the 2 same day. ECF No. 15–16. 3 Plaintiff's
counsel was awarded \$7,437.36 under the Equal Access to Justice Act, though 4 he received only
\$5,748.36 in EAJA fees because Plaintiff owed a debt subject to Treasury Offset 5 in the amount
of \$1,689.00 for Plaintiff's child support debt. ECF No. 19-5 (Notice of Treasury 6 Offset).

7 On remand the agency determined that Plaintiff was disabled beginning August 1, 2018, 8 and
entitled to past-due benefits amounting to \$78,077.57. ECF No. 19-1 The agency withheld 9 25%
for potential payment to Plaintiff's counsel, of which Plaintiff's counsel requests a fee of 10
\$12,300. 11 II. Legal Standard 12 An attorney may seek an award of fees for representation of a
Social Security claimant who 13 is awarded benefits: 14 Whenever a court renders a judgment
favorable to a claimant under [42 USC § 401, 15 et seq] who was represented before the court by
an attorney, the court may determine and allow as part of its judgment a reasonable fee for such
representation, not in 16 excess of 25 percent of the total of the past-due benefits to which the
claimant is entitled by reason of such judgment...

17 18 42 U.S.C. § 406(b)(1)(A); see also *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002) (Section 406(b) 19 controls fees awarded for representation of Social Security claimants). A contingency fee 20 agreement is unenforceable by the Court if it provides for fees exceeding the statutory amount. 21 *Gisbrecht*, 535 U.S. at 807 (“Congress has provided one boundary line: Agreements are 22 unenforceable to the extent that they provide for fees exceeding 25 percent of the past-due 23 benefits.”).

24 District courts “have been deferential to the terms of contingency fee contracts § 406(b) 25 cases.” *Hern v. Barnhart*, 262 F.Supp.2d 1033, 1037 (N.D. Cal. 2003). However, the Court must 26 review contingent-fee arrangements “as an independent check, to assure that they yield reasonable 27 results in particular cases.” *Gisbrecht*, 535 U.S. at 807.

In doing so, the Court should consider “the 28 1 character of the representation and the results the representative achieved.” *Id.* at 808. In addition, 2 the Court should consider whether the attorney performed in a substandard manner or engaged in 3 dilatory conduct or excessive delays, and whether the fees are “excessively large in relation to the 4 benefits received.” *Crawford v. Astrue*, 586 F.3d 1142, 1149 (9th Cir.

2009) (en banc); *Vazquez v. 5 Com'r of Soc. Sec.*, No. 1:17-CV-1646-JLT, 2020 WL 2793059, at *2 (E.D. Cal. May 29, 2020). 6 III. Analysis 7 Here, Plaintiff was represented by experienced counsel and achieved a favorable result, 8 namely an order of remand, entry of judgment, and ultimately a substantial award of past due 9 benefits. There is no indication that counsel engaged in dilatory conduct, excessive delay, or 10 substandard performance.

11 Although the parties ultimately settled the matter before Defendant filed a response, 12 Plaintiff had already filed an extensive and detailed motion for summary judgment analyzing the 13 1,712-page administrative record, which likely was a factor in the agency’s decision to settle the 14 matter. Counsel’s itemized bill reflects 29.3 hours of attorney time to prepare the complaint, review 15 the administrative record, draft a summary judgment motion, and negotiate a settlement with 16 defense counsel, which is a reasonable time expenditure for the performance of those tasks.

ECF 17 No. 19-4. 18 The effective hourly rate amounts to \$419.79 per hour, which is well below the upper limit 19 of reasonableness. See *Malta v. Comm'r of Soc. Sec.*, No. 1:18-CV-00415-CDB, 2024 WL 20 3618430, at *3 (E.D. Cal. Aug. 1, 2024) (collecting cases and finding that “hourly rate of \$1,553.87 21 is within the upper boundaries of reasonableness.”); *Coder v. Comm'r of Soc.*

Sec., No. 1:20-cv- 22 00497-CDB, 2024 WL 1742026, at *3 (E.D. Cal. Apr. 23, 2024) (reducing de facto hourly rate of 23 \$3,532.87 to \$1,500.00 per hour); *Reyna v. Comm'r of Soc. Sec.*, No. 1:22-CV-00484-SAB, 2024 24 WL 4453046, at *2 (E.D. Cal. Oct. 9, 2024) (approving de facto

hourly rate of \$1,326.57 per hour); 25 *Langston v. Saul*, No. 1:18-CV-00273-SKO, 2020 WL 4501941, at *3 (E.D.

Cal. Aug. 5, 2020) 26 (\$1,453.42 per hour). 27 This award would not amount to a windfall. In matters subject to section 42 U.S.C. 406(b), 28 the lodestar is merely a guidepost, and a comparatively high effective hourly rate is generally 1 warranted to compensate counsel for the risk assumed in representing social security claimants. 2 See *Crawford v. Astrue*, 586 F.3d 1142, 1148 (9th Cir.

2009). 3 The \$12,300 total amount is also consistent with total contingent fee awards granted under 4 section 406(b). See, e.g., *Ortega v. Comm'r of Soc. Sec.*, No. 1:12-cv-01030-AWI-SAB, 2015 5 WL 5021646, at *3 (E.D. Cal. Aug. 21, 2015) (\$24,350); *Thomas v. Colvin*, No. 1:11-cv-01291- 6 SKO, 2015 WL 1529331, at *3 (E.D. Cal. Apr. 3, 2015) (\$44,603.50); *Boyle v. Colvin*, No. 1:12- 7 cv-00954-SMS, 2013 WL 6712552, at *2 (E.D.

Cal. Dec. 19, 2013) (\$20,577.57); *Jamieson v. 8 Astrue*, No. 1:09-cv-00490-LJO-DLB, 2011 WL 587096, at *2 (E.D. Cal. Feb. 9, 2011) (\$34,500). 9 Considering the character of the representation, the result achieved, and the fee amounts 10 awarded in similar cases, the request here is reasonable. 11 Accordingly, it is ORDERED as follows: 12 1. Counsel's motion for attorney fees pursuant to 42 U.S.C. 406(b) (ECF No. 19) is 13 GRANTED.

14 2. The Commissioner shall certify a payment of a gross award in the amount of 15 \$12,300 to: Francesco Benavides. 16 3. Francesco Benavides shall refund directly to Plaintiff Dario Gutierrez the EAJA fee 17 previously awarded in the amount of \$5,748.36. 18 IT IS SO ORDERED. 19 20 Dated: October 16, 2025 /s/ Gary S. Austin UNITED STATES MAGISTRATE JUDGE 21 22 23 24 25 26 27 28